



**ORDINANCE NO. 09-01**

**ORDINANCE OF THE  
BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA  
ADDING SUB-CHAPTER 1, ENTITLED:  
“TRANSIENT OCCUPANCY TAX,”  
TO ARTICLE 3 OF CHAPTER 8 OF TITLE 1 OF THE BLUE  
LAKE RANCHERIA TRIBAL CODE.**

The Business Council of the Blue Lake Rancheria hereby ordains as follows:

A new Sub-Chapter 1, entitled “Transient Occupancy Tax,” is added to Title 1, Chapter 8, Article 3 of the Blue Lake Rancheria Tribal Code to read as follows:

**TITLE 1. GOVERNMENT  
CHAPTER 8. FISCAL REGULATIONS  
ARTICLE 3. TAXATION**

**SUB-CHAPTER 1. TAX IMPOSED ON TRANSIENTS**

Sec. 1.08.3.1.1.010 Title.

Sec. 1.08.3.1.1.020 Definitions.

Sec. 1.08.3.1.1.030 Tax imposed.

Sec. 1.08.3.1.040 Exemptions.

Sec. 1.08.3.1.050 Operator’s Duties.

Sec. 1.08.3.1.060 Reporting and Remitting.

Sec. 1.08.3.1.070 Audit.

Sec. 1.08.3.1.080 Records.

Sec. 1.08.3.1.090 Refunds.

Sec. 1.08.3.1.100 Actions to Collect.

Sec. 1.08.3.1.110 Violations-Penalties

Sec. 1.08.3.1.120 Attorneys Fees.

**Sec. 1.08.3.1.010 Title.**

This Sub-Chapter shall be known as the Blue Lake Rancheria Tribal Transient Occupancy Tax.

**Sec. 1.08.3.1.020 Definitions.**

Except where the context otherwise requires, the definitions given in this section govern the construction of this Sub-Chapter:

- (A) "Business Council" means the Tribal Business Council as established by the Constitution of the Blue Lake Rancheria.
- (B) "Hotel" means any structure or any portion of any structure which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging houses, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.
- (C) "Occupancy" means the use or possession or the right to the use or possession of any room or rooms or portion thereof in any hotel for dwelling, lodging or sleeping purposes.
- (D) "Operator" means a person or the Tribe who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity, including but not limited to use of a managing agent.
- (E) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.
- (F) "Rancheria" means the lands within the boundaries of the Blue Lake Rancheria in Humboldt County and any other lands owned by the Tribe or owned by the United States of America in trust for the Tribe.
- (G) "Rent" means the consideration charged and received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.
- (H) "Tax Administrator" means the Business Council or a tribal employee or official designated by resolution of the Business Council to administer this Sub-Chapter.
- (I) "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until a period of thirty (30) days has expired, unless there is an agreement in writing

between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this Article may be considered.

(J) "Tribe" means the Blue Lake Rancheria of California, a federally recognized Indian Tribe.

**Sec. 1.08.3.1.030 Tax imposed.**

For the privilege of occupancy in any hotel on the Rancheria, each transient is subject to and shall pay a tax in the amount of ten percent (10%) of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the Tribe, which is extinguished only by payment to the operator or to the Tribe. The transient shall pay tax to the operator of the hotel at the time the rent is paid. If rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator.

**Sec. 1.08.3.1.040 Exemptions.**

No tax shall be imposed upon:

(A) Any person as to whom or any occupancy as to which it is beyond the power of the Tribe to impose the tax herein provided.

(B) Any person whose rent is paid for by the Tribe as part of the Temporary Aid To Needy Families (TANF), Homeless Assistance Program, or the General Relief Program of the Tribe, or whose rent is paid for through a homeless voucher program conducted by a Tribe-based nonprofit corporation recommended for exemption by the Tribe.

No exemption shall be granted except upon claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed or approved by the Tax Administrator.

**Sec. 1.08.3.1.050 Operator's Duties.**

(A) Each operator shall collect the tax imposed by this Sub-Chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent or that, if added, any part will be refunded except in the manner hereinafter provided.

(B) Where the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Sub-Chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this Sub-Chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

(C) A proprietor performing his or her functions under this Sub-Chapter by a managing agent is responsible as principal for the negligence of his or her agent in the transaction of the business of the agency.

(D) If the rent is charged as part of a single comprehensive cost or flat rate which includes reasonable charges for meals, food, or other services, the operator shall separately describe for the Tax Administrator the portion of the charge or rate applicable to lodging to the same extent as reported to the Board of Equalization of the State of California for meals, food, or other services.

(E) If the operator imposes upon the transient occupant any fee or charge for use of facilities in conjunction with the lodging, which fee or charge is a mandatory fee or charge additional to lodging, the Transient Occupancy Tax shall be applicable to such mandatory fee or charge.

#### **Sec. 1.08.3.1.060 Reporting and Remitting.**

(A) Each operator shall, on or before the last day of the month following the close of each calendar quarter or at the close of any shorter reporting period which may be established by the Tax Administrator, make a return to the Tax Administrator, on forms provided or approved by the Tax Administrator, of the total rents charged and received and the amount of tax collected for transient occupancies. Each operator shall describe in such return the rents attributable to each hotel under the operator's control, together with the name of the owner of each hotel, the address and location of each hotel for which rents are reported in the return. Such return form to the Tax Administrator shall be executed by the operator under penalty of perjury under the laws of the Tribe and the State of California.

(B) The failure to file such return shall be subject to a fine of One Thousand Dollars (\$1,000).

(C) Any advance deposit retained by the operator following cancellation of any advance hotel reservation, which represents payment for keeping the room open for the person making the reservation, as opposed to constituting an administrative or a handling fee to recover the administrative cost of processing the room reservation and subsequent cancellation, shall be deemed to be a payment for room occupancy within the contemplation of this Ordinance, and shall be subject to the Transient Occupancy Tax.

(D) At the time the return is filed the full amount of the tax collected shall be remitted to the Tax Administrator. The Tax Administrator may establish shorter reporting periods for any certificate holder if the Tax Administrator deems it necessary in order to insure collection of the tax and the Tax Administrator may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this Sub-Chapter shall be held in trust for the account of the Tribe until payment thereof is made to the Tax Administrator.

#### **Sec. 1.08.3.1.070 Audit.**

(A) The Tax Administrator may audit the books and records of any operator to determine the adequacy of the Transient Occupancy Taxes due.

(B) All operators shall keep and make available to the Tax Administrator records including but not limited to lodging receipts, room or lodging registration records, sales tax returns, daily maid reports, linen service invoices, and all records described below in Section 1.08.3.1.110(A).

**Sec. 1.08.3.1.080 Records.**

(A) Every operator shall keep and preserve for a period of five (5) years all records as may be necessary to determine the amount of the Transient Occupancy Tax for which the operator may be liable. The records deemed necessary for this determination shall include but not be limited to general ledgers, income tax returns, a chronological cash journal showing tax and room rate separately, or other comparable means of summarizing the operator's monthly or quarterly revenue, supported by room registrations, which may, with reasonable effort, be identified with the revenue summary. These records shall be available, during regular business hours, for inspection by the Tax Administrator. Performance of an audit does not waive the Tribe's right to any tax or the five (5) year requirement of preserving records.

(B) The Tax Administrator at his or her sole discretion may require that these records shall be brought to the Tax Administrator's Office for review and examination.

(C) It is unlawful for any Tribe official or any person having an administrative duty under this Sub-Chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return or to permit any return or copy thereof to be seen or examined by any person. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of any unpaid tax or amounts of tax required to be collected, interest and penalties.

**Sec. 1.08.3.1.090 Refunds.**

(A) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tribe under this Sub-Chapter, it may be refunded as provided in Subparagraphs (B) and (C) of this Section, provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years of the date of payment. The claim shall be on forms furnished or approved by the Tax Administrator.

(B) Any operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the person from whom the tax has been collected was not a transient. However, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(C) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the Tribe by filing a claim in the manner provided in Subparagraph (A) of this Section, but only when the tax was paid by the transient directly to the Tax Administrator or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Tax Administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

(D) No refund shall be paid under the provisions of this Section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

**Sec. 1.08.3.1.100 Actions to Collect.**

Any tax required to be paid by any transient under this Chapter shall be deemed a debt owed by the transient to the Tribe. Any such tax collected by an operator which has not been paid to the Tribe shall be deemed a debt owed by the operator to the Tribe. Any person owing money to the Tribe under this Chapter shall be liable to an action brought in the name of the Tribe in Tribal Court or California State Courts for the recovery of such amount. The Tribe shall be entitled to recover from anyone found liable for the debt, any costs, including attorney's fees, personnel costs, or other expenses incurred by the Tribe because of the failure to timely remit tax proceeds to the Tribe.

**Sec. 1.08.3.1.110 Violations-Penalties**

Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this Chapter to be made is subject to a civil penalty, not to exceed \$2,000, any civil or administrative remedy otherwise available for failure to comply with the requirements of this Sub-Chapter. If the Tribe prevails, the Tribe shall be entitled to recover any costs, including attorney's fees, personnel costs, or other expenses incurred because of failure to comply with the requirements of this Sub-Chapter.

**Sec. 1.08.3.1.120 Attorneys Fees.**

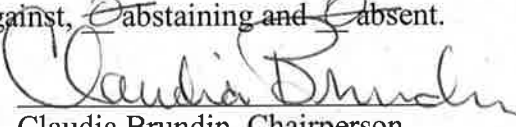
If the Tribe prevails in any court litigation to enforce this Sub-Chapter, it shall be entitled to recover from the opposing party or parties all of its reasonable attorneys fees incurred in prosecuting the action.

**C E R T I F I C A T I O N**

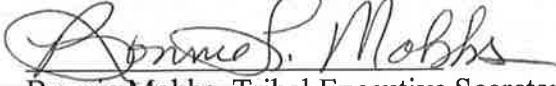
We, the undersigned Chairperson and Secretary of the Business Council of the Blue Lake Rancheria hereby certify that the foregoing resolution was adopted at a duly called meeting of the Blue Lake Rancheria Business Council with a quorum present on

June 8, 2009, by a vote of 5 for, 0 against, 0 abstaining and 0 absent.

Dated: 6-8-09

  
Claudia Brundin, Chairperson

Dated: 6-8-09

  
Bonnie Mobbs, Tribal Executive Secretary